

The Examiner also alleged that Invention I has the separate utility of buying and selling any product from a vendor to a seller online, without offering a product up for bid.

In order for restriction to be required, Invention I and Invention II must be independent or distinct. However, if the search and examination of the entire application may be made without serious burden, the Examiner must do so, even if there are claims to independent and distinct inventions. MPEP 803.

A serious burden may be shown by an explanation of separate classification, separate status in the art as different fields of search. The Examiner asserted that Invention I is classified in Class 705, subclass 4 and Invention II is classified in Class 705, subclass 37. However, elected Invention II, which includes limitations related to Invention I, would also have to be searched in Class 705, subclass 4. Since Class 705, subclass 4 must be searched if Invention II is elected, there is no extra, serious burden in examining the claims of Invention I, as well.

In addition, it is noted that six Office Actions have been issued in the present application (October 2, 2003, March 13, 2001, October 10, 2001, April 11, 2002, November 8, 2002, April 21, 2003), prior to the current Restriction Requirement, the first two by the first Examiner handling the case, and the next four by the current Examiner. The original claims included both Inventions I and II. Therefore, the invention of all the claims had to have already been searched. Continuing to examine the claims of both Inventions I and II should not, therefore, be a serious burden. It is also noted that the first Examiner did not consider it a serious burden to examine both alleged inventions and neither did the current Examiner, until now.

Concerning the Examiner's assertion the claims of Invention I have separate utility, such as buying and selling any product from a vendor to a seller online (i.e., without offering a product up for bid), it is respectfully submitted that the claims are explicitly limited to tier priced



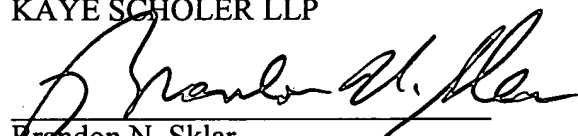
commodities. The claimed invention cannot, therefore, be used with "any product." As explained in the Amendment dated August 25, 2003, products such as those sold in electronics stores are not tier-priced commodities, such as electricity, natural gas, water and telecommunications bandwidth. Invention I cannot, therefore, be used to sell any product. It can only be used to sell tier-priced commodities.

Withdrawal of the Restriction Requirement and consideration of all the claims are respectfully requested.

Respectfully submitted,

KAYE SCHOLER LLP

By:


Brandon N. Sklar
Reg. No. 31,667

KAYE SCHOLER LLP
425 Park Avenue
New York, NY
212-836-8653

JAN 12 2004

GROUP 3600

RECEIVED

JAN 12 2004

GROUP 3600